Supreme Court, U.S.
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No. ____

IN THE

Supreme Court of the United States

Kenneth A. Evans,
Petitioner

v.

United States of America,
Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals
for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

Whether the United States Court of Appeals for the Third Circuit ("court of appeals") erred in U.S. v. Connor, 898 F.2d 942 (1990) in holding that Congress defined the term 'income' in 26 USC 61(a)?

Whether the District Court was in error in denying the Petitioner's claim for refund when that court relied on the case of U.S. v. Connor, 898 F.2d 942 (1990) which held in pertinent part "Congress exercised it's power to tax income by defining income as, inter alia, compensation for services." And whether the court of appeals relying on the same case, erred in affirming the District Court's decision.

Whether, during the tax year 1999, the petitioner received 'taxable income' as defined by the appropriate statutes and applicable regulations of Title 26 of the United States Code and therefore has any liability for income tax?

Whether the United States Court of Appeals for the Third Circuit violated its judicial discretion in denying Petitioner's Motion to Supplement the District Court record, which sought to enter evidence into the record that the Internal Revenue Service and the Department of Justice are illegally misapplying Title 26 of the United States Code beyond its Constitutional jurisdiction?

Whether the court of appeals erred in awarding damages of $4000 to respondent?

PARTIES TO THE PROCEEDING

The caption of this case contains the names of all parties to this proceeding. The Petitioner in this case is not a corporation. The Respondent is the federal government of the united States of America created under the Constitution for the united States of America.

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PETITION FOR A WRIT OF CERTIORARI

This petition seeks review of the Orders entered by the court of appeals on March 26, 2002 (Appendix C) and May 6, 2002 (Appendix A), which affirmed the Orders of the nether court entered on June 26, 2001 (Appendix H) and August 6, 2001 (Appendix F).

The orders of the court of appeals are un-published and non-PRECEDENTIAL according to local appellate rules, which became effective the very day the instant case was docketed in the court of appeals.

OPINIONS BELOW

The memorandums for the United States Court of Appeals for the Third Circuit are unpublished and can be found at Appendix A and Appendix C.

The Memorandum Opinions for the United States District Court for the Eastern District of Pennsylvania can be found at Appendix F and Appendix H.

JURISDICTION

Jurisdiction is granted upon this Court by 28 USC 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

In pertinent part U.S. Constitution, amend V states, "No person shall ... be deprived of life, liberty or property without due process of law.".

In pertinent part, Title 26, Section 1(d) of the United States Code states, "There is hereby imposed on the taxable income of every married individual ... a tax determined in accordance with the following table." 26 U.S.C. section 1(d).

In pertinent part, Title 26, Section 61(a) of the United States Code states, "gross income means all income from whatever source derived, including (but not limited to) the following items:"

In pertinent part, Title 26, Section 63 of the United States Code states, "for purposes of this subtitle, the term

"taxable income" means gross income minus the deductions allowed by this chapter"

Pursuant to this Court's Rule 14.1(f), the remaining pertinent statutory and regulatory provisions, including 26 USC 861(a), 26 USC 861(b), 26 CFR 1.861(a), 26 CFR 1.861-8T(d)(2)(ii)(A) and 26 CFR 1.861-8T(d)(2)(iii), are set forth in Appendix I.

STATEMENT OF THE CASE

Petitioner, Kenneth A. Evans, a Citizen and inhabitant of the Commonwealth of Pennsylvania – one of the several states of the union, filed a timely claim for refund with the Internal Revenue Service ("IRS") for the tax year 1999 to which the IRS did not respond. On January 29, 2001, the petitioner filed suit in the U.S. District Court for the Eastern District of Pennsylvania ("nether court") seeking $12,322.58 plus interest and expenses, invoking the jurisdiction of the nether court under 26 U.S.C. section 1346(a)(1).

The Petitioner maintains that according to the statutes and associated regulations under Title 26 of the United States Code, also known as the Internal Revenue Code ("IRC"), that the Petitioner has no liability for any tax imposed under the IRC and is entitled to the above mentioned refund.

On June 26, 2001, **without** ruling that any liability exists, the nether court granted the Respondent's Motion for Summary Judgment and denied Petitioner's Motion for Summary Judgment holding,

"... this Court rejects all of Evans' arguments concerning his income tax liability for the 1999 tax year. Federal law requires Evans to file an income tax return and pay income taxes,".

On July 5, 2001, the Petitioner filed a Motion for Reconsideration. One July 25, 2001, the Petitioner filed an Addendum to his Motion for Reconsideration and submitted new evidence in the form of internal IRS computer documentation supporting his claim.

On August 6, 2001, the nether court denied the Petitioner's Motion for Reconsideration and on August 9, 2001, Petitioner filed a timely appeal with court of appeals.

On October 18, 2001, the Petitioner attended a desk conference ("audit") with two agents of the IRS in relation to the tax year referenced in the instant case, due to actions taken by counsel for the Respondent directly related to the instant case. During the audit, the Petitioner obtained IRS internal documentation, directly related to the instant case, which the Petitioner later moved to admit as evidence of fraud and collusion on the part of the IRS and the Department of Justice to deny the Petitioner due process. During the audit, the Petitioner also obtained recorded statements made by of one of the IRS agents, recorded on cassette tape, that directly contradicted the nether court's holding, effectively destroying the Respondent's case.

On October 26, 2001, the Petitioner filed a Motion to Supplement the District Court record with the aforementioned directly relevant evidence. On March 1, 2002, the instant case was docketed in the court of

appeals. Whether by coincidence or deliberate action, a change in the court of appeals' local rules, related to the publication, or lack thereof, of certain decisions of the court of appeals, became effective the same day.

On March 26, 2002, the court of appeals panel issued it's non-precedential, not for publication, unreported, per curiam opinion in the instant case and denied the admission of directly relevant evidence.

On April 23, 2002, the Petitioner filed a Motion for Rehearing En Banc along with another Motion to Supplement the District Court record with evidence obtained by another IRS employee that directly contradicted the allegedly controlling appeals court ruling in U.S. v. Connor, 898 F.2d 942 (1990). The court of appeals denied both motions on May 26, 2002.

To date, in respect to the instant case, no liability has been established, no evidence of specific liability has been presented and no argument has been made by the respondent as to any specific liability.

REASONS FOR GRANTING THE PETITION

I. This case involves Matters of Great Importance, Including Clarification of the Specific Limited Authority of Taxation Granted by the Constitution and the Misapplication of Title 26 of the United States Code.

Just seven years ago, this Court stated quite clearly, "The Constitution creates a Federal Government of enumerated powers, See U.S. Const. Article. 1 section8. As James Madison wrote, 'The powers delegated by the proposed Constitution to the federal government are few and defined." United States v. Lopez, 514 U.S. 549 (1995).

The misapplication of Title 26 of the United States Code, as presently perceived by the majority of the population of this nation, represents the greatest acquisition of wealth by way of fraud in world history and is undoubtedly the greatest threat to liberty this nation has ever known.

In the instant case, the nether court held, with the appeals court affirming, that the $12,322.58 currently being held by the respondent is justified, based on the erroneous assumption that the compensation received by the petitioner for his labor, during the tax year 1999, is taxed according to 26 USC § 1.

Either inadvertently or through deliberate misapplication, the nether court holding, along with the appeals court affirmation, ignored the whole of the law and deny the Petitioner his right not to be deprived of property without due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

The IRC is specific upon what it imposes a tax, as it necessarily must be. But, the specificity has been deliberately obscured through changes and alterations to the IRC over the past 80 years. This deception has been perpetuated through court rulings such as those in the instant case.

The statute contained in 26 U.S.C. § 1 imposes the "income tax" in five different categories (unmarried

people, married people filing jointly, etc.). In each case the wording reads "there is hereby imposed on the taxable income of..."(each of the five categories). 26 U.S.C. section 1. The limited scope of 'taxable income' has been misrepresented to Americans for decades.

'Taxable income' is generally defined as, "gross income minus the deductions allowed by this chapter.." 26 U.S.C. section 63. 'Gross income' is generally defined as, "all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services...; (2) Gross income derived from business; (3) Gains derived from dealings in property; (etc.)" 26 U.S.C. 61(a)."

The statutorily defined meanings of common words or terms often and unfortunately maintain entirely different meanings from the ordinary usage of the term. This is known in common parlance as legalese and is why the legal profession is often appropriately maligned.

If the definition of "gross income" were simply to mean "all income," the phrase "from whatever source derived" would be irrelevant. But, this is not the case. "All the words used in the statute should be given their proper signification and effect." Washington Market Co. v. Hoffman, 101 U.S. 112, 115 , 25 S. L.ed. 782, 783.

> "We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. ...a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word, shall be superfluous, void, or

insignificant." U. S. v. Lexington Mill & Elevator Co., 232 U.S. 399 at 409 (1914).

While it is true that, "This Court has frequently stated that this language [the definition of "gross income"] was used by Congress to exert in this field 'the full measure of its taxing power.'" Commissioner v. Glenshaw Class Co., 348 U.S. 426 (1955). The *full measure of Congressional taxing power* has never been fully and accurately represented to the general public.

In fact, *the full measure of Congressional taxing authority* has been deliberately misrepresented to both the general public, as well as to agents of the IRS, whom are charged with enforcing the law.

The Code of Federal Regulations elucidates the language of the general definitions of 'gross income' and 'taxable income,' in Subchapter N of Chapter 1 of the IRC and the related regulations.

26 CFR 1.861-1(a) clarifies the scope and purpose of the phrase "from whatever source derived" contained within Section 61 of the IRC by declaring clearly, "The statute provides for the following three categories of income: (1) Within the United States ... (2) Without the United States ... [and] (3) Partly within and partly without the United States." 26 CFR 1.861-1(a).

This section goes on to say, "Part I (section 861 and following), subchapter N, chapter 1 of the Code, and the regulations thereunder **determine the sources of income for purposes of the income tax**," 26 CFR 1.861-1(a) (emphasis added).

This language is paramount to determining what is meant by, "whatever source derived." There can be no

denying that Part I (section 861 and following), subchapter N, chapter 1 of the IRC, and the regulations thereunder do not show the petitioner's compensation as falling within their scope and purpose.

It is apparent therefore, that the petitioner's compensation does not fall within the definition of either "gross income" or "taxable income" and is therefore not taxed under Section 1 of the IRC.

This conclusion is independently reinforced by other sections of the Code of Federal Regulations, which define exempt income.

"(ii) Exempt income and exempt asset defined--(A) In general. For purposes of this section, the term exempt income means any income that is, in whole or in part, exempt, excluded, or eliminated for federal income tax purposes." 26 CFR section 1.861-8T(d)(2)(ii).

The section then goes on to specify what is not exempt. The following should be read carefully, since it starts with a double negative. If a certain kind of income is not exempt, it means it **IS** subject to the federal income tax. Therefore, after being told that "items" of income (which make up "classes of gross income") may not be taxable, a list is given of the types of income which **ARE** subject to the federal income tax:

> "(iii) Income that is not considered tax exempt. The following items are not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to them:

(A) In the case of a foreign taxpayer (including a foreign sales corporation (FSC)) computing its effectively connected income, gross income (whether domestic or foreign source) which is not effectively connected to the conduct of a United States trade or business;
(B) In computing the combined taxable income of a DISC or FSC and its related supplier, the gross income of a DISC or a FSC;
(C) For all purposes under subchapter N of the Code, including the computation of combined taxable income of a possessions corporation and its affiliates under section 936(h), the gross income of a possessions corporation for which a credit is allowed under section 936(a); and
(D) Foreign earned income as defined in section 911 and the regulations thereunder (however, the rules of Sec. 1.911-6 do not require the allocation and apportionment of certain deductions, including home mortgage interest, to foreign earned income for purposes of determining the deductions disallowed under section 911(d)(6))." 26 CFR section 1.861-8T(d)(2)(iii).

"In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out." Gould v. Gould, 245 U.S. 151 (1917)

To assume, as the Respondent would like this Court do, that the Petitioner's compensation is to be considered 'not exempt income' would be to extend the provisions of this section beyond the clear import of the language used and embrace matters not specifically pointed out. This would directly contradict the rule established by this Court.

II. The Courts Below Erred in Holding and Affirming that Congress has Defined the Term 'Income' as 'Compensation for Services" Creating a Conflict Among The Different Circuit Courts of Appeals and With Holdings of This Court.

This Court has previously held,

"... it becomes essential to distinguish between what is and what is not 'income,' and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress can not by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised." Eisner v. Macomber, 252 US 189 at 206.

The understanding and scope of this holding is obvious. Words and terms contained within the

Constitution are defined by the people of the United States at the time those terms are added to our nation's founding document. This Court's declaration that Congress can not by 'any definition' determine what is and what is not income is appropriately irrefutable.

The definition of words contained within the Constitution cannot be determined, altered or expanded by legislative acts of Congress, otherwise Congress could expand its own power without a Constitutional Amendment. This would defeat the very purpose for which the Constitution was written, namely to define and limit the authority of our federal government.

In 1990, the court of appeals directly contradicted the above holding of this Court, "Congress exercised its power to tax income by defining income as, *inter alia*, compensation for services, including fees, commissions, fringe benefits and similar items..." United States v. Connor, 898 F.2d 942 (3rd Cir. 1990).

This cannot be.

Furthermore, there is direct contradiction between this Third Circuit ruling and the Ninth Circuit, which agreed with this Court in Eisner. "The general term 'income' is not defined in the Internal Revenue Code," United States v. Ballard, 535 F.2d 404 (9th Cir. 1976).

The current and binding definition of 'income' was determined by the people of the United States at the time of the declared ratification of the Sixteenth Amendment and was discovered by this Court over the following several years.

In 1920 this Court gave a specific definition of 'income' and this definition has not been modified since.

It is as follows: "a gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through sale or conversion of capital assets." Eisner v. Macomber, 252 U.S.189 (1920).

The holding in Connor opposes this Court's definition by claiming that Congress possesses the legislative authority to determine the definition of 'income' and thusly, through legislation, equated 'income' with compensation for services.

To allow the appeals court ruling in Connor to stand would be to entirely undermine the authority of this Court, as well as negate Article V of the Constitution of the United States, which provides for the process of amending our nation's founding document.

III. The Courts Below Erred in Denying the Petitioners Motion to Supplement the District Court Record.

On October 26, 2001, the Petitioner moved the court of appeals to admit a "referral report," (APPENDIX J) which the petitioner obtained during an October 18, 2001 desk conference with employees of the IRS.

This evidence is directly related to the instant case and is a clear indication that the Department of Justice, in collusion with the IRS are fraudulently attempting to manufacture evidence of liability.

The "referral report" contains the following statement:

> "The [instant] case is being handled by Attorney John Carroll in the Dept. of Justice (tele. No. (202) 307-6669). Since the taxpayer believes that only Service can prepare a return on behalf of the taxpayer, the Justice attorney is requesting us to get a return prepared pursuant to IRC 6020(b) so that it will enable him to successfully defend the refund claims. The income tax calculations should be based on the filing status of married filing separately with one exemption and the standard deduction."

The actions requested by the Justice attorney and echoed by the IRS employee filing the report indicate a clear attempt to exceed the statutorily defined authority of 26 USC 6020(b) as explained in the Lesson 23 of Internal Revenue Manual (APPENDIX K).

The Internal Revenue Manual lists those types of returns that are statutorily permitted to be filed under 26 USC 6020(b). Form 1040, also known as a Personal Income Tax Return is **not** listed among them. Furthermore, Lesson 23 contains the following statement related to the authority of IRS agents to file returns under 26 USC 6020(b):

> "The IRM restricts the broad delegation shown in figure 23-2, for revenue officers, to employment, excise, and partnership tax returns **because of Constitutional issues**. (You have already studied audit referrals as a means to enforce compliance on income tax returns)." (emphasis added)

CONCLUSION

These conclusions therefore follow:

1. This Court should grant this Petition otherwise severe injustice would manifest itself against the Petitioner, as the Petitioner would be deprived of property absent due process of law.

2. The decision upon which the nether court holding was based, namely United States v. Connor, 898 F.2d 942 (3rd Cir. 1990), is unconstitutional and must be overturned.

3. The Respondent has provided no evidence and offered no argument that the Petitioner has any liability for an income tax imposed under the IRC. According to the appropriate statutes and regulations themselves, the Petitioner has no liability for income tax in the instant case.

4. The Petitioner should be granted a full refund of all funds currently held for the tax year 1999 by the Respondent, totaling $12,322.58 plus interest, fees and penalties.

5. The court of appeals violated its judicial discretion by denying Petitioner's Motion to Supplement the District Court record with evidence directly relevant to the instant case.

6. Because the Petitioner has no liability for income tax for the tax year 1999, this Court should reverse the court of appeals decision to impose damages in the amount of $4000.00.

Respectfully Submitted,

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Dated: